

Office of the  
CLARK COUNTY LAND USE HEARING EXAMINER

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**NOTICE TO PARTIES OF RECORD**

**PROJECT NAME: Jackie's Landing Post Decision**

**CASE NUMBERS: PST2009-00012**

The attached decision of the Land Use Hearing Examiner will become final and conclusive unless a written appeal is filed with the Board of Clark County Commissioners, 6<sup>th</sup> floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington, no later than 5:00 p.m. on, **September 17, 2009** (14 calendar days after written notice of the decision is mailed).

The Hearing Examiner's procedural SEPA decision is final and not appealable to the Board of County Commissioners.

All other appeals must be written and contain the information required under CCC 40.510.030(H), and placed in the following preferred format:

1. Project Name
2. Case Number
3. Name and signature of each petitioner: The name and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under Section 40.510.030(H)(1). If multiple parties file a single petition for review, the petition shall designate one (1) party as the contact representative for all contact with the responsible official.
4. Introduction:  
Provide a brief history of the case. This should include a chronology of dates of related applications, cases numbers, and a description of the proposal as it relates to the decision being appealed
5. Standard of Review:  
Describe what standard of review (i.e., board's discretion to reverse the examiner's decision) you believe applies to board's review of the alleged errors (e.g., substantial evidence for challenges to findings of fact; de novo review for code interpretation; or, clearly erroneous for issues involving application of code requirements to particular facts).
6. Alleged Errors/Response to Alleged Errors:  
Identify the specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error (i.e., reference the relevant exhibits and passages, court cases, etc.).

The appeal fee is **\$716**

The Board of Commissioners shall hear appeals of decisions based upon the written record before the examiners, the examiner's decision, and any written comments

received in the office of the Board within the following submittal deadlines measured from the date of the filing of the appeal:

- Fourteen (14) calendar days for the appellant's initial comments;
- Twenty-eight (28) calendar days for all responding comments; and,
- Thirty-five (35) calendar days for appellant reply comments, which are limited to the issues raised in the respondent's comments.

Written comments shall be limited to arguments asserting error in or support of the examiner decision based upon the evidence presented to the examiner.

Unless otherwise determined by the Board for a specific appeal, the Board shall consider appeals once a month, on a reoccurring day of each month. The day of the month on which appeals are considered shall be consistent from month to month as determined by Board.

The Board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If continued, the Board of Commissioners shall designate the parties or their representatives to present argument, and permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the Board of Commissioners. At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the Board of Commissioners may affirm, reverse, modify or remand an appealed decision.

Mailed on: **September 3, 2009**

PROJECT NAME: Jackie's Landing  
PROJECT NUMBER: PST2009-00012  
HEARING DATE: 8/27/09

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JACKIE'S LANDING  
PST2009-00012  
HEARING DATE: 8/27/09

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BEFORE THE LAND USE HEARINGS EXAMINER  
OF CLARK COUNTY, WASHINGTON

Regarding an application by Gary Rademacher and Ed Fogg to) **FINAL ORDER**  
increase the number of phases from 3 to 6 and to alter conditions) **PST2009-00012**  
of approval for a previously approved 170-lot subdivision at 11113) **(Jackie's Landing)**  
NE 112<sup>th</sup> Avenue in unincorporated Clark County, Washington)

**A. FINDINGS AND CONCLUSIONS**

1. On August 14, 2007 the County granted preliminary plat approval to subdivide roughly 30-acres into 170 lots for single family detached homes. PLD2007-00038 (Jackie's Landing). With this Post Decision Review application the applicants proposes to increase the number of phases from three to six and to alter conditions of approval A-8 and D-4 of the prior approval to allow the development to proceed if the County funds a traffic signal at the intersection of SR-503 and NE 107<sup>th</sup> Street.

2. Clark County Hearings Examiner Joe Turner (the "examiner") held a duly noticed public hearing on August 27, 2009 to receive and consider public testimony in this matter. County staff recommended the examiner approve the application subject to conditions. See the Staff Report and Recommendation to the Hearings Examiner dated August 12, 2009 (the "Staff Report"). The applicants accepted the findings and conditions in the Staff Report. One person testified orally with concerns about increased traffic on 107<sup>th</sup> Street. Disputed issues or concerns in the case include the following:

a. Whether the section of 107<sup>th</sup> Street abutting proposed Lot 161 is included in proposed Phase 1; and

b. Whether concerns the traffic impacts of the subdivision are relevant to this application for post decision review.

3. Based on the findings provided or incorporated herein, the examiner approves the application subject to the conditions at the conclusion of this final order.

**B. HEARING AND RECORD**

1. Hearings Examiner Joe Turner (the "examiner") received testimony at the public hearing about this application on August 27, 2009. A record of the testimony and evidence in the record is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Clark County Department of Community Development. The record closed at the end of the hearing.

2. At the hearing County planner Richard Daviau summarized the Staff Report and the history of the development.

a. He noted that this application will not change the number or layout of previously approved lots. The applicants merely propose to increase the number of phases from three to six to “break up the construction” into smaller sections.

b. He testified that the Board of County Commissioners (the “Board”) is considering including the traffic signal at the intersection of SR503(117<sup>th</sup> Avenue) and 107<sup>th</sup> Street in the County’s six-year Capital Improvement Plan. If the County does so, the signal will be considered “reasonably funded.” The applicants requests changes to the conditions of the prior approval to allow the development to proceed if the Board chooses to fund the signal.

c. He argued that the applicant must include the full width of 107<sup>th</sup> Street abutting proposed Lot 161 in Phase 1 in order to provide access to the remainder of Phase 1.

3. The applicants, Gary Rademacher and Ed Fogg, accepted the findings and conditions in the Staff Report without objections.

a. They testified that they will construct the entire section of 107<sup>th</sup> Street between the east boundary of the site and the phasing line between Phases 3 and 4 as part of Phase 1, including the section of 107<sup>th</sup> Street abutting proposed Lot 161. The phase line in the middle of 107<sup>th</sup> Street north of proposed Lot 161 should be located on the north edge of Lot 161.

b. They testified that the original subdivision approval did not require that they improve the offsite section of 107<sup>th</sup> Street.

4. Irvin Ritola expressed concerns with the volume of traffic on 107<sup>th</sup> Street, between SR503 and 112<sup>th</sup> Avenue. This road section cannot accommodate additional traffic from this development.

5. The examiner closed the record at the end of the hearing and announced his intention to approve the proposed development subject to the conditions of approval in the Staff Report.

### **C. FINDINGS**

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicants or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues relate to the mandatory applicable approval criteria for this proposal and were addressed by County staff in their

reports, by agency comments, by the applicants and others. The Examiner adopts the following findings with regard to each:

**LAND USE:**

Finding 1 - Phasing

Pursuant to CCC 40.540.040 D4, a phasing plan shall show:

- a. The phasing plan includes all land within the preliminary plat;*
- b. Each phase is an independent planning unit with safe and convenient circulation and with facilities and utilities coordinated with requirements established for the entire subdivision; and*
- c. All road improvement requirements are assured. ”*

In response to Criterion (a) above, the examiner finds that the proposed phasing plan does include all land within the preliminary plat.

In response to Criterion (b) above, the examiner finds that the sequence of construction (based on the phase numbers) can result in each phase being an independent planning unit, provided that the required utilities, stormwater infrastructure and street improvements necessary to support that phase are constructed.

In response to Criterion (c) above, the examiner finds that construction of the development according to the approved plans will assure the required road.

Finding 2 - Phasing

The first phase must include construction of the section of 107<sup>th</sup> Street abutting proposed Lot 161. The applicant should be required to modify the phasing plan to include the full width of 107<sup>th</sup> Street abutting proposed Lot 161 in Phase 1. (See Condition 4).

Finding 3 - Approval Timelines

Pursuant to CCC 40.500.010(B), preliminary plat approval is valid for five years from the date of approval. Subsection (B)(2) of this section provides extensions for phased developments. Those applications specifically approved for phased development may receive subsequent two year extensions in accordance with the following:

- 1. At least one (1) phase has met the general development approvals timeline basic rule described in Section 40.500.010(B)(1), within the five (5) year time limit;*
- 2. The request for the extension has been submitted in writing to the responsible official at least thirty (30) days prior to the five (5) year deadline, or in the case of a subsequent extension request, at least thirty (30) days prior to the expiration of the approval period;*
- 3. The applicant has demonstrated an active effort in pursuing the next phase of the application; and*
- 4. The applicant has demonstrated that there are no significant changes in conditions which would render approval of the application contrary to the public health, safety or general welfare.*

A request for extension approval shall be processed as a Type I action. Appeal and post-decision review of a Type I action is permitted as provided in this subtitle. The proposed subdivision should be implemented in accordance CCC 40.500.010(B), measured from the preliminary plat approval date of August 14, 2007. (See Condition 3)

**Conclusion (Land Use):**

The examiner concludes that the proposed preliminary plan meets the land use requirements of the Clark County Code subject to conditions.

**TRANSPORTATION CONCURRENCY:**

Finding 3

Public Works/Transportation staff does not support the requested change in language with respect to the existing conditions of approval A-8 and D-4. This requested language change is stated in the proposed Section 3 language on page 4 of the applicant's narrative.

The Jackie's Landing development currently has conditions of approval (A-8 and D-4) related to a concurrency failure at the intersection of SR-503 and NE 107th Street. Clark County is presently considering undertaking this mitigation work as a County sponsored project with a "reasonably funded" status. However, because no funding source has been identified as of the time of writing of this staff report, the project has not been placed on the County's 6-year Capital Improvement Program. The examiner finds that the two existing conditions should be modified to reflect the possibility that the County will undertake the project within 6 years, thus alleviating the currency failure.

The following language should be added to Conditions of Approval A-8 and D-4 - "This condition may be modified or eliminated by the Director of Public Works in the event that the County adopts a 6 year Transportation Improvement Program that considers the NE 107th/SR-503 signalization project to be "reasonably funded". (See Condition 3)

Finding 4

Mr. Ritola expressed concerns with the volume of traffic on NE 107<sup>th</sup> Street between R503 and 112<sup>th</sup> Avenue. The examiner understands those concerns, but they are not relevant to this post decision review application. The County reviewed the traffic impacts of this subdivision and concluded that the roads in the area can accommodate the additional traffic. That decision was not appealed and is now final. Approval of this post-decision review application will not alter the volume of traffic generated by the approved development. Therefore the traffic impacts of the development are not relevant to this review.

**Conclusion (Transportation):**

The examiner concludes that the proposed preliminary plan, subject to the condition, meets the transportation requirements of the Clark County Code and is feasible.



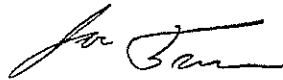
## **B. ORDER**

Based on the foregoing findings and except as conditioned below, the examiner hereby approves PST2009-000162 (Jackie's Landing) in general conformance with the revised preliminary plat (Exhibit 6) and the plans and reports associated with this proposal (Exhibit 7). This approval is granted subject to the requirements that the applicants, owner or subsequent developer (the "applicants") shall comply with all applicable code provisions, laws and standards and the following conditions.

### **Conditions of Approval**

1. Except as specifically provided herein, all conditions of approval in the Hearings Examiner's Final Order for PLD2007-00038 (Jackie's Landing Subdivision) dated August 14, 2007 shall remain in effect.
2. Preliminary plat approval shall expire in accordance with the timelines in CCC 40.540.040(D)(4), as measured from the preliminary plat approval date of August 14, 2007.
3. The following language shall be added to Conditions of Approval A-8 and D-4 - "This condition may be modified or eliminated by the Director of Public Works in the event that the County adopts a 6 year Transportation Improvement Program that considers the NE 107th/SR-503 signalization project to be "reasonably funded."
4. The phasing plan shall include the full width of 107<sup>th</sup> Street abutting proposed Lot 161 in Phase 1. (See Land Use Finding 2).

DATED this 3rd day of September 2009.

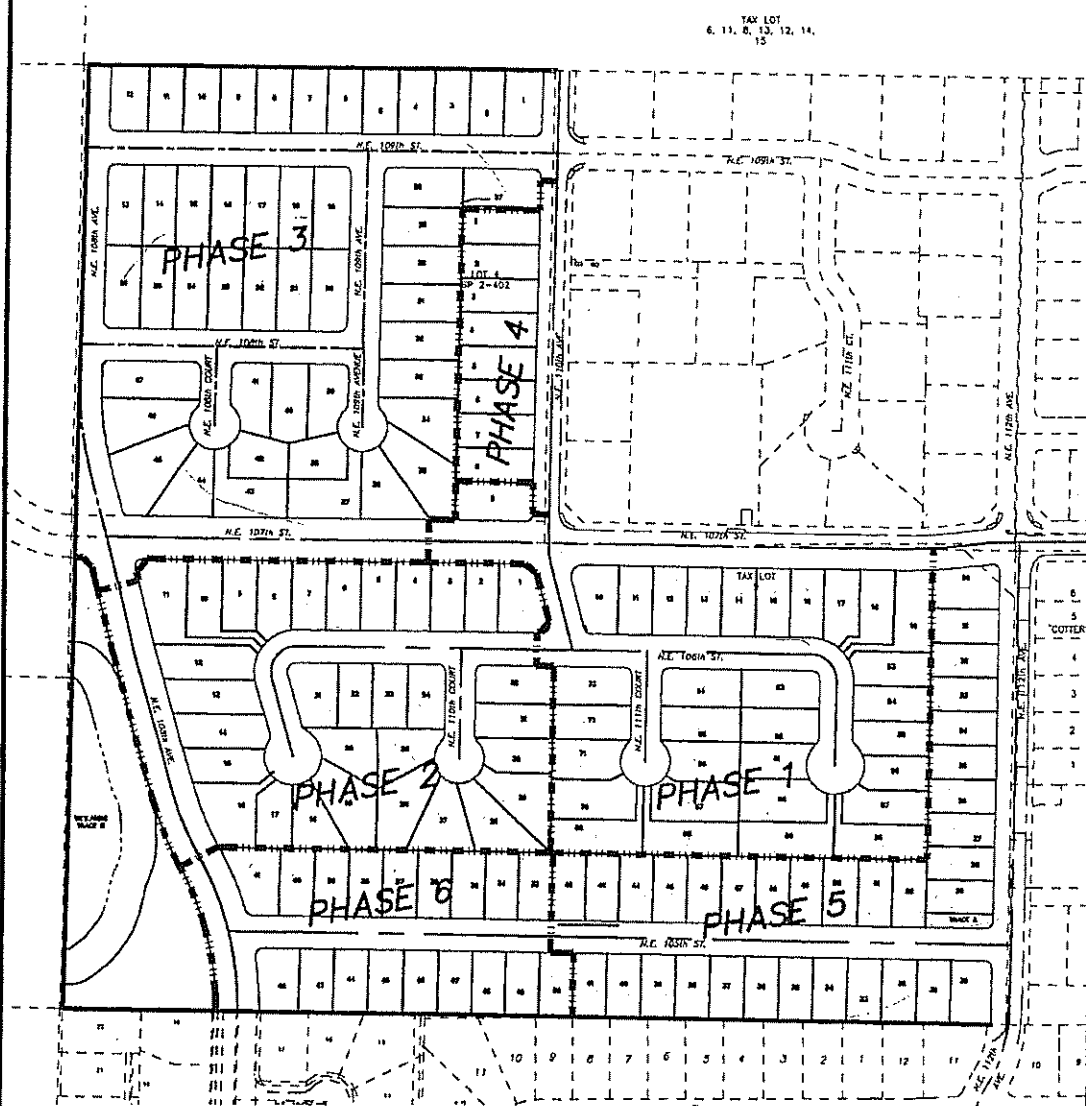


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Joe Turner, AICP  
Clark County Hearings Examiner

# EXHIBIT "B"

TAX LOT  
6, 11, 8, 13, 12, 14,  
15



PHASE 1: 32 LOTS  
PHASE 2: 32 LOTS  
PHASE 3: 47 LOTS  
PHASE 4: 8 LOTS  
PHASE 5: 33 LOTS  
PHASE 6: 18 LOTS



# HEARING EXAMINER EXHIBITS

**Project Name:** JACKIE'S LANDING  
**Case Number:** PST2009-00012  
**Hearing Date:** August 27, 2009

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial Map
2		CC Development Services	Vicinity Map
3		CC Development Services	Zoning Map
4		CC Development Services	Comprehensive Plan Map
5	5/12/09	Applicant: HDJ Design Group	Full Size Maps: Preliminary Subdivision Map, Urban Neighborhood Circulator
6	5/12/09	Applicant: HDJ Design Group	Reduced Modified Plan
7	5/12/09	Applicant: HDJ Design Group	Application Packet: Cover Sheet & Table of Contents, Application Form, Application Fee, Copy of Original Development Plan, Copy of Original Development Decision, Narrative, Modified Plans, Other Relevant Information, Submittal Copies
8	6/16/09	CC Development Services	Development Review Fully Complete Determination
9	6/30/09	CC Development Services	Notice of Type III Development Review Application & Public Hearing
10	6/30/09	CC Development Services	Affidavit of Mailing Public Notice
11	8/7/09	CC Development Services	Notice of Public Hearing to Columbian- to Publish 8/12/09
12	8/7/09	Applicant: HDJ Design Group	Applicants Affidavit of Posting
13	8/12/09	CC Development Services	Affidavit of Posting Public Notice
14	8/12/09	CC Development Services – Richard Daviau, the Project Planner	Type III Development Staff Report & Recommendation Written by Richard Daviau

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division  
 1300 Franklin Street  
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